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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,054	04/14/2004	Eric Lawrence Barsness	ROC920030052US1	6100
30206 7590 07/27/2010 IBM CORPORATION ROCHESTER IP LAW DEPT. 917 3605 HIGHWAY 52 NORTH ROCHESTER, MN 55901-7829				
EXAMINER NGUYEN, CINDY				
ART UNIT 2161		PAPER NUMBER		
NOTIFICATION DATE 07/27/2010		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

rociplaw@us.ibm.com

***Advisory Action  
Before the Filing of an Appeal Brief***

**Application No.**

10/824,054

**Applicant(s)**

BARSNESS ET AL.

**Examiner**

CINDY NGUYEN

**Art Unit**

2161

*—The MAILING DATE of this communication appears on the cover sheet with the correspondence address —*

THE REPLY FILED 13 July 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
 Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_  
 Claim(s) objected to: \_\_\_\_\_  
 Claim(s) rejected: \_\_\_\_\_  
 Claim(s) withdrawn from consideration: \_\_\_\_\_

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: Applicant's arguments have been fully considered but they are not persuasive.

Applicant argued that, Clarke does not disclose "...defining a respective financial valuation of each of a plurality of work items to be processed..." as recited in claim 6. The examiner disagrees. Clarke defines the financial valuation of the work items to be processed such as financial data, power rates at different times of day, price of on-demand business services, marketplace information for buyers and sellers of IT resource, such as jobs/work items available for servicing, offered prices, and required resource configuration (e.g., jobs requiring resources) as recited in paragraphs 0041, 0044.

Applicant argued that Clarke disclose "...comparing the respective financial valuation of each respective said work item to a respective cost of accessing additional computer resources necessary to process the work item in a current time period..." The Examiner disagrees. Clarke performs the calculations for additional data request from additional external sources specifying the time period during which process and...Determine and specifying the changes to be made, specifying an effective time period during which changes should be in effect...see paragraph 0046. Clarke teaches similar to claim invention that include the financial calculations for additional requirement/sources or job requirement resources during the time period of the processing and dynamic changing additional data sources in real time that "change determining process" uses values determined by a "value determining process" to determine whether a change is advisable, and a determination is made whether a change in the distributed computing environment is advisable, alternate values being based on potential changes to workload and configuration that as an example, utilization is monitored based on a load, and from the value of the currently running application it is determined that additional external compute work can be accepted.

Clarke teaches a technique that for compare the financial data with the additional data sources or requirement for complete the process or job in real time processing. Hence, Clarke discloses a dynamically accessing additional resources or deferring execution of a

/Apu M Mofiz/  
Supervisory Patent Examiner, Art Unit 2161